

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL REVISION APPLICATION NO. 62 OF 2006

1. M/s. Kai-tech Constructions
Pvt. Ltd. Ground Floor,
Kaithra Mansion,
Behind St. Anne's School,
Post Fatorda, Agalli,
Margao-Goa.
2. Mr. Chachappan M. C.,
(Director),
M/s. Kai-tech Constructions
Pvt. Ltd.
Ground Floor, Kaithra Mansion,
Behind St. Anne's School,
Post Fatorda, Agalli,
Margao-Goa.
Presently in Jail at Sada,
Vasco-Goa.

... Applicants

versus

1. M/s Durga Tiles
Represented herein by its
partner Shri Santobarao Dessai,
having office at Khadaband,
Ponda Goa.
2. State
(through Public Prosecutor)

... Respondents

Mr. Shivan Dessai, Advocate for the Applicants.

Mr. H. D. Naik, Advocate for the Respondent No.1.

Ms. Winnie Coutinho, Public Prosecutor for the Respondent No.2.

CORAM : N. A. BRITTO, J.

DATE : 16TH MARCH, 2007.

ORAL JUDGMENT

Admit. By consent heard forthwith.

2. This revision application is filed by the accused whose conviction and sentence under Section 138 of the Negotiable Instruments Act, 1881 has been upheld by the learned Additional Sessions Judge, Panaji, by his Order dated 16-9-2006.

3. The short point raised in this revision is that Mr. Santobarao Desai, who claimed to be a partner of the respondent firm M/s. Durga Tiles had no authority in law to institute the said complaint against the applicants/accused and therefore no conviction could have been recorded against the applicants.

4. There is no dispute that the firm M/s Durga Tiles had supplied bricks to the accused and had issued three cheques towards the payment of the said bricks and when the said cheques were presented for collection, the same were returned unpaid with endorsement "stopped payment" and upon notice having been issued to the accused calling upon him to pay the sum of Rs.2,38,000/-, which notice the accused received on 16-9-2003 the accused made a payment of Rs.1,00,000/- due on two of the cheques, out of three, in the sum of Rs.50,000/- each but failed to pay the balance amount of Rs.1,38,000/- and therefore the respondent M/s. Durga Tiles, represented by its partner the said Santobarao Desai filed the complaint on 27-10-2003.

5. Admittedly, the complaint was filed on behalf of the firm M/s. Durga Tiles by its partner Santobarao Desai and in his affidavit in evidence the said Santobarao Desai had stated that he was the partner of the complainant firm. In cross-examination by the accused the said Santobarao Desai had affirmed that M/s. Durga Tiles was a partnership and was a registered firm. He had denied the suggestion that it was not registered and as such he had not produced the registration certificate. The said Santobarao Desai volunteered to produce the registration certificate and on the next date of hearing produced notice no.I which, interalia, reads as follows:-

NOTICE NO. I

Notice is hereby given pursuant to sub-section (1) of Section 63 of the IPF 1932 according to Form No.VI that Kum. Bharti S. Dessai has been retired from the partnership firm w.e.f. 1-4-2001 and Mr. Santobarao Krishnarao Desai has been admitted as new partner w.e.f. 1-4-2001. The said Form No.VI is filed to the respective file.

Panaji dated 22-12-2004.

Sd/-

This is a true xerox copy of the Firm registered under No.137/92 at page 87 Vol. No. XIII dated 14-9-1992.

Panaji dated 22-12-2004.

Sd/-

Registrar of Firms
Ilhas
Sealed

6. The learned Counsel on behalf of the parties do not dispute that the said certificate/notice No. I is issued pursuant to Section 63 of the Indian Partnership Act, 1932(Act, for short) and that the same reflects the change in the Register of Firms maintained by the Registrar of Firms and changes on the said register are made after the Registrar is intimated in Form No.VI as provided by Rule 5(6) of the Rules framed under the said Act. In fact, at the time of hearing, learned Counsel on behalf of the respondent firm sought to produce a copy of Form No.VI which was filed by the firm, after its reconstitution but the same was objected to by Mr. Dessai, the learned Counsel on behalf of the accused, and hence it is not taken on record.

7. There is also no dispute that the firm was registered under No.137/92 as shown on the said certificate/notice No. I. The learned Counsel on behalf of the accused submits that the said certificate is dated 22-12-2004 and does not show that the said Santobarao Desai was the partner of the respondent firm M/s. Durga Tiles either on 27-10-2003 when the complaint was filed or on 25-3-2004 when affidavit in evidence was filed. The learned Counsel further submits that only because an entry is made in the said certificate dated 22-12-2004 that Mr. Santobarao Krishnarao Desai has been admitted as new partner w.e.f. 1-4-2001 is no proof that he was inducted as a new partner as stated therein w.e.f. 1-4-2001 in the absence of production of deed of reconstitution of the said firm. The learned Counsel further submits that only because it is reflected in the said certificate/notice No.I that the said Santobarao is a partner it cannot be said that the said Santobarao Desai was admitted as new partner w.e.f. 1-4-2001.

8. The learned Counsel on behalf of the respondent firm submits that the said certificate/notice No.I shows that he was admitted as a new partner w.e.f. 1-4-2001 and only because the certificate was issued on 22-12-2004 does not mean that he was not inducted on the date shown therein. The learned Counsel further submits that the fact that the said certificate shows that he was admitted as a new partner w.e.f. 1-4-2001 shows that he was inducted on the date mentioned therein and as such had authority as a partner to represent the firm when the complaint was filed as well as when the complainant's evidence was given on affidavit.

9. Section 63 of the Act provides for recording of changes in and dissolution of a firm. It further provides that when a change occurs in the constitution of a registered firm any incoming, continuing or outgoing partner, and when a registered firm is dissolved any person who was a partner immediately before the dissolution, or the agent of any such partner or person specially authorised in this behalf, may give notice to the Registrar of such change or dissolution, specifying the date thereof; and the Registrar shall make a record of the notice in the entry relating to the firm in the Register of Firms, and shall file the notice along with the statement relating to the firm filed under Section 59.

10. Section 69 deals with effect of non-registration and sub-section (1) thereof provides that no suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm. Sub-Section(2) thereof provides that no suit to enforce a

right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm.

11. The learned Counsel on behalf of the respondent has placed reliance on **Abdul Gafoor v. Abdurahiman**(2000(3) ALL MR(JOURNAL) 17) wherein it has been held that the effect of non registration of the partnership firm under Section 69 of the Partnership Act is applicable only to cases involving civil rights and it has no application to criminal cases. Therefore, the contention that the prosecution in that case was not sustainable under Section 69(2) of the Indian Partnership Act was held not acceptable. To the same effect is a decision relied upon on behalf of the petitioner in the case of **M/s Shreeram Finance Corporation v. Yasin Khan and others**((1989) 3 SCC 476) wherein the Apex Court has held that a suit in contravention of Section 69(2) is not maintainable. That was a case where the firm was reconstituted prior to the date of filing of the suit by the firm against a third party but notice regarding the reconstitution was given to the Registrar of Firms and note taken accordingly in the Register of Firms subsequent thereto.

12. Admittedly, the certificate/notice No.I was issued on 22-12-2004 and as the very notice shows the firm is registered under No.137/92 dated 14-9-1992. As already stated, it is not in dispute that the said certificate/notice No.I is a copy of the Register of Firms and that changes to it are made only after Form No.VI is given to the Registrar of Firms in terms of Rule 5(6) of the Rules r/w Section 63 of the Act. As the said certificate shows, the earlier partner of the firm Ms. Bharti S. Dessai was retired w.e.f. 1-4-2001 and Mr. Santobarao Krishnarao Desai was admitted as a new partner

w.e.f. 1-4-2001. Although, the said certificate is issued on 22-12-2004 it does show that Ms. Bharti S. Dessai retired from 1-4-2001 and Santobarao Krishnarao Dessai was admitted on same day. The said certificate was issued, as it is mentioned therein after Form VI was received pursuant to Rule 5(6) of the Rules r/w Section 63 of the Act. Although, on behalf of the complainant no deed of reconstitution of the partnership was produced or for that matter Form No.VI it can certainly be presumed that the change in the Register of Firms as reflected in the certificate/notice No.I was made only after receipt of Form No.VI, as stated therein. True, no date as to when Form No.VI was filed on behalf of the firm is mentioned on the said certificate/notice No.I. However, there is a presumption that official acts must have been duly performed and likewise there is also a presumption about the correctness of the facts stated on the said certificate/notice No.I. No doubt, the said presumptions are rebuttable. It was not necessary for the complainant, in the light of the statements made by him in the cause title, in the affidavit in evidence which were supported by the said certificate/notice No.I to further prove that he was the partner of the firm not only on the date when the complaint was filed as well as when he filed his affidavit in evidence on behalf of the said firm. The onus to rebut that Santobarao Krishnarao Dessai was not the partner was upon the accused which onus the accused had failed to discharge. The certificate may not be conclusive evidence to show that Santobarao K. Dessai was admitted as a partner w.e.f. 1-4-2001 but certainly it was prima facie evidence which was supported by his own evidence and which the accused failed to rebut. In a situation like this, none of the submissions made on behalf of the accused can be accepted.

13. Consequently, the conviction of the accused imposed by the learned Magistrate and upheld by the learned Additional Sessions Judge cannot be interfered with.

N. A. BRITTO, J.

RD

Date: 29.03.2007.

14. At this stage, both the parties have filed consent terms and sought permission to compound the offence. The accused has deposited before this Court a sum of Rs.1,40,000/-, the same shall be paid to the Complainant. Over and above the said sum of Rs.1,40,000/-, the accused has paid to the applicant a sum of Rs.20,000/-. Since both the parties have settled the matter by making payment of Rs.1,60,000/- towards the subject cheque of Rs.1,38,000/-, parties are allowed to compound the offence.

15. Considering the facts, the accused shall now stand acquitted under Section 138 of the Act.

N. A. BRITTO, J.

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